

FILED

SEP 14 2015

BUREAU OF REAL ESTATE

By [Signature]

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of

ANTONIO QUEVEDO CHAVEZ,

Respondent.

No. H-39847 LA

OAH No. 2015060137

NOTICE

TO: ANTONIO QUEVEDO CHAVEZ, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 7, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 7, 2015, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 14, 2015, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 14, 2015, at the

1 Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 9/4/2015

7 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

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BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

FILED

SEP 14 2015

BUREAU OF REAL ESTATE

By 

In the Matter of the Application of
ANTONIO QUEVEDO CHAVEZ,
Respondent.

No. H-39847 LA

OAH No. 2015060137

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 14, 2015, in Los Angeles.

Maria Suarez, complainant, was represented at the hearing by Steve Chu, Staff Counsel.

Antonio Quevedo Chavez, respondent, was self-represented.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 14, 2015.

FACTUAL FINDINGS

1. Complainant brought the statement of issues in her official capacity as a Deputy Real Estate Commissioner of the State of California. Respondent filed a timely Request for Hearing.
2. On March 27, 2015, respondent submitted an application to the Bureau of Real Estate (the Bureau) to be licensed as a real estate salesperson. (Exhibit 2.) The Bureau did not issue a license and instead brought the statement of issues.
3. On February 25, 2004, respondent was convicted, in the United States District Court for the Northern District of Illinois, case no. 02 CR 1148-2, on a plea of guilty, of violation of Title 21 United States Code section 841(a)(1) (possession with intent to distribute cocaine), a felony. He was sentenced to 120 months in federal prison and ordered to pay a fine and assessment totaling \$1,100. (Exhibit 3.)

4. The facts and circumstances underlying the conviction are that, in late 2002, respondent, then 22 years old, agreed to help acquaintances he had made as a teenager in Mexico transport cocaine in the Chicago area. An automobile was equipped with a hidden compartment where several kilograms of cocaine were concealed. The automobile was first driven by a co-conspirator, who was arrested in Oklahoma. Law enforcement discovered the concealed drugs and persuaded the driver to assist in arresting other perpetrators. Respondent's associate delivered a nearly identical automobile to respondent. On November 26, 2002, respondent was arrested upon his entering the decoy vehicle. (Exhibit 3.)

5. Respondent passed the General Education Development (GED) test in prison to obtain the equivalent of a high school diploma. He was released from prison in December 2011 and lived in a half-way house for half a year. He is serving a five-year term of supervised release, scheduled to end in December 2016. (Exhibit G, which has a typographical error, "2001," which should be "2011.") His probation officer's July 10, 2015 letter stated that respondent had "maintained compliance with all the terms and conditions of supervision." (*Ibid.*)

6. Respondent has no college degree, but he has taken five college courses, each for three credits. He does not currently plan to earn a bachelor's degree, because he is more interested in real estate and vocational training for real estate work. Respondent has also completed courses that led to certificates without college credit, in parenting, electronics, and relating to business.

7. Respondent grew up in a dysfunctional family, in which his mother suffered domestic abuse from respondent's alcoholic father. As respondent stated, he had time in prison to reflect on past unhappiness that may have contributed to his criminal conduct and how he might adjust his attitude and conduct to avoid further unhappiness. He stated that he is a changed person, not only because of his own efforts to change, but also thanks to the people he has met and helped and been helped by since his release.

8. For the past several years, respondent has found enough employment or self-employment to support himself. He worked as a personal trainer for approximately two years, from 2012 until 2014. Overweight as a child, now fit and slender, respondent stated his job as a trainer allowed him to derive a good deal of satisfaction from helping others to become and stay healthy.

9. Respondent currently lives with his sister, who is in the business of purchasing, rehabilitating, and renting properties in Los Angeles County. Respondent has assisted in the development and management of properties of the business. He recently worked on, supervised the construction of, and in May 2015, sold a residence, new-built from the ground up, from which he derived substantial income.

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10. Approximately three times per year respondent travels to Texas to see his 19-year-old son. They talk at times by telephone as well. Respondent expressed regret that he was not involved in his son's life in the past. The son, however, may move to Los Angeles to attend college, which respondent stated he hoped would provide opportunity for a closer relationship.

11. Respondent belongs to a church in Orange, California, where he volunteers, especially for children's programs.

12. Respondent has taken real estate courses that Keller Williams offers to its agents and prospective agents. He plans to take more such vocational training and is eager to learn from the several Keller Williams agents he has met and worked with.

13. Josh Spitzen, Team Leader/CEO Keller Williams Cerritos, and Jeff Yoncion, a Broker at Keller Williams Pacific Estates Cerritos, wrote a July 13, 2015 letter of recommendation for respondent. Aware of his conviction, they praised him as professional in his work at a Keller Williams office in Long Beach, California and expressed the opinion that he would be an asset to the real estate industry. They stated that he is a person with "a passion to help others." (Exhibit A.)

14. Enrique Monguia, a judge of the Superior Court of California, County of Los Angeles, wrote respondent a July 7, 2015 letter of recommendation. Judge Monguia stated that, as an attorney in the Public Defenders' Office, he had years of experience with people like respondent who have been in the parole and probation systems. The judge worked with the District Attorney's Office and the Probation Department to establish the new AB109 Unit for Los Angeles County, which, among other things, reorganized supervision of certain offenders released from incarceration. Respondent and his sister live next door to the judge, who has observed respondent's repair work to his sister's house, and has lent him tools for the purpose, without qualm. The judge stated he is impressed with respondent's work ethic, and is aware that respondent established his own business as a personal trainer, and was a personal trainer and a good example to the judge's son. "I totally support [respondent] Mr. Chavez in his endeavor to obtain a real estate license." (Exhibit B.)

15. Sylvia Novoa, a Vice President at Chicago Title and associated with Enramada Properties, LLC, wrote a July 1, 2015 letter recommending respondent, who has worked with her part-time in property development and management. Ms. Novoa stated that respondent is "organized, efficient, extremely competent," and has excellent communication skills. (Exhibit C.)

16. Kristy Urquiza has been a physician in Mexico and was studying at U.C.L.A. to take the examination from the Medical Board of California while respondent, whom she dates, was studying for the Real Estate Salesperson Examination. She praised respondent's discipline in being her study partner, has observed him helping others, and stated that he is "always polite, honest, professional & ethical with everyone." (Exhibit D.)

17. Respondent and Ms. Urquiza are considering marriage. She may attend a residency program at U.C.L.A., but there is some likelihood the residency may be in another part of the country, perhaps Chicago, where both she and respondent have relatives. Respondent's plan to be a California real estate salesperson and his commitments in Southern California make marriage planning uncertain, especially in case of a residency for Ms. Urquiza outside California.

18. Ana Saucedo has been a licensed insurance agent for the past 10 years at Farmers Insurance in Brea, California. In her July 5, 2015 letter of recommendation, she stated she met respondent at a fundraising event relating to cancer and has seen his willingness to take on all sorts of tasks to help others, to whom he is respectful and considerate. (Exhibit E.)

19. Corinne R. Ramos stated in her letter of recommendation that she has been associated with the real estate industry for over 20 years. She works at KASE Real Estate and Keller Williams Pacific Estates/Newport Coast. She stated that respondent has a strong work ethic and "possesses all the characteristics of an individual who I would certainly welcome unto [*sic*] my real estate team." (Exhibit F.)

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent, Antonio Quevedo Chavez, for a real estate salesperson's license, pursuant to Business and Professions Code sections 475, subdivisions (a)(1) and (a)(2), and 480, subdivisions (a)(1) and (a)(2), based on his conviction of a crime substantially related to the qualifications, functions, and duties of the business or profession for which application is made and his commission of an act involving dishonesty, fraud, and deceit with the intent to substantially benefit respondent or another, or substantially injure another. (Findings 3 and 4.)

2. Cause exists to deny the application of respondent, Antonio Quevedo Chavez, for a real estate salesperson's license, pursuant to Business and Professions Code section 10177, subdivision (b), based on respondent's conviction of a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Findings 3 and 4.)

3. Respondent has the burden of proof to show by a preponderance of the evidence that issuance of a real estate salesperson's license to him would be consistent with the Bureau's mandate to protect the public and ensure that its licensees are responsible and law-abiding.

4. Business and Professions Code section 480, subdivision (a), cited in paragraph 5 of the statement of issues, provides in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime. . . .
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself . . . or another, or substantially injure another. [¶] . . . [¶]
- (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

5. Business and Professions Code section 10177, subdivision (b), cited in paragraph 5 of the statement of issues, provides in pertinent part: "The commissioner may . . . deny the issuance of a license to an applicant, who has done any of the following . . . : [¶] . . . [¶] (b) Entered a plea of guilty . . . to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. . . ."

6. Criteria for evaluating whether conduct bears a substantial relationship to the qualifications, functions, or duties of a licensee are set out in California Code of Regulations, title 10, section 2910, providing in pertinent part:

(a) When considering whether a license should be denied . . . on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) . . . of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Section [] 480 . . . of the Code if it involves: [¶] . . . [¶]

(4) The employment of . . . deceit, falsehood or misrepresentation to achieve an end. [¶] . . . [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person . . . of another. [¶] . . . [¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

7. The Bureau's criteria for evaluating rehabilitation are set out in California Code of Regulations, title 10, section 2911, providing in pertinent part:

The following criteria have been developed by the Bureau pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance . . . of a license in considering whether or not to deny the issuance . . . on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the Bureau action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.) [¶] . . . [¶]

(e) Successful completion or early discharge from probation or parole. [¶] . . . [¶]

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought. [¶] . . . [¶]

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments. [¶] . . . [¶]

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

8. Respondent's misconduct was substantially related to the functions and duties of a licensee of the Bureau. Real estate licensees owe a fiduciary duty to their clients, a duty of the highest good faith, requiring, among other things, full disclosure of pertinent facts. The duty of good faith functions in the real estate context so that a licensee's "breach of a fiduciary duty usually constitutes constructive fraud." (*Salahutdin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555, 563.) Respondent's conduct in concealing an illegal substance and attempting to sell it illegally is analogous to such constructive fraud, and furthermore constitutes actual and deliberate deceit as well.

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9. The conduct that led to respondent's felony conviction constitutes dishonesty, fraud, and deceit, all with the intent to substantially benefit respondent or another, within the meaning of Business and Professions Code section 480, subdivisions (a)(1) and (a)(2). Respondent employed deceit and falsehood by conspiring with others and attempting to transport cocaine in an automobile by means of a hidden compartment. (See Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).) In addition, the conduct had the potential to injure others, in that cocaine, which respondent intended to sell, poses dangers of personal injury to users of the drug and to law enforcement personnel charged with the duties of interdiction. (Bus. & Prof. Code, § 480, subd. (a)(2); see also Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) All such conduct is contrary to the functioning and the fulfillment of the duties of a real estate licensee.

10. Moreover, members of the public put their trust in real estate salespersons, licensed as they are by a government agency. The criminal conduct in which respondent engaged, whether or not it was related to the technical or mechanical qualifications of a real estate licensee, undermines that public trust, and is substantially related, in this sense also, to the licensed activities. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

11. As respondent's crime was serious, evidence of rehabilitation from such serious wrongdoing should be abundant. Respondent's evidence from friends and business acquaintances is abundant, and detailed too. (See Cal. Code Regs., tit. 10, § 2911, subd. (n).) The evidence indicates that respondent's incarceration was effective in that it gave respondent abundant time to reflect on how he might change, as he has done. (See Cal. Code Regs., tit. 10, § 2911, subd. (m).)

12. The Bureau's criteria indicate that usually at least two years should have passed after termination of probation before rehabilitation efforts may be considered sufficient. (See Cal. Code Regs., tit. 10, § 2911, subd. (a).) Respondent's probation has so far lasted approximately three years and eight months and is scheduled to continue until December 2016. However, respondent has not simply fulfilled probation requirements. Not required by any court, respondent has made efforts to stabilize or establish family relationships, with his sister, his son, and with Ms. Urquiza. (See Cal. Code Regs., tit. 10, § 2911, subd. (h).) He has worked with several real estate licensees who vouch for his aptitude for the real estate industry and his good conduct in helping others while working under their supervision. (See Cal. Code Regs., tit. 10, § 2911, subd. (m).) The evidence indicates respondent's ability to earn income and carry on business in real estate-related projects, his work with others both as a volunteer and as part of his business as a personal trainer, and in addition to working in real estate, respondent has pursued vocational training, educating himself in real estate matters with formal instruction provided by Keller Williams and the encouragement of several of its licensees.

13. There is an absence of subsequent felony or misdemeanor convictions or conduct on respondent's part that might lead to such convictions. (See Cal. Code Regs., tit. 10, § 2911, subd. (n)(5).) Respondent's conduct for the past several years since his release from prison reflects rather a new ability to conform to societal rules.

14. Respondent has met his burden of proof by a preponderance of the evidence with respect to rehabilitation. Respondent's efforts at rehabilitation are sufficient for the issuance of a restricted real estate salesperson's license.

ORDER

The application for a real estate salesperson's license of respondent, Antonio Quevedo Chavez, is denied; provided, however, a restricted real estate salesperson's license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of the Business and Professions Code:

A. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(i) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(ii) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to this restricted license.

B. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to respondent.

C. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate, which shall certify as follows:

(i) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

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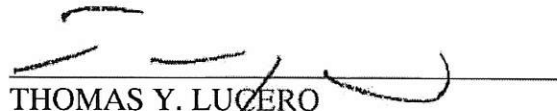
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(ii) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

Dated: August 7, 2015


THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearings